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October 2, 2020

The Honorable Jocelyn G. Boyd
Chief Clerk/ Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: Alex Kadoshnikov v. Duke Energy Carolinas, LLC
Docket Number: 2020-218-E

Dear Ms. Boyd:

Enclosed for filing, please find Duke Energy Carolinas, LLC's (the "Company") Answer and Motion to Dismiss the Complaint filed in the above-referenced docket. The Company requests that the Commission hold in abeyance the filing deadlines for all parties and the hearing date pending resolution of the motion.

By copy of this letter we are serving the same on the parties of record.

Sincerely,

Katie M. Brown

Enclosure

cc: Alex Kadoshnikov (via U.S. Mail and email w enclosure)
Alexander W. Knowles, Office of Regulatory Staff (via email w enclosure)
Carri Grube Lybarker, Department of Consumer Affairs (via email w enclosure)
Roger P. Hall, Department of Consumer Affairs (via email w enclosure)
Heather Shirley Smith, Duke Energy Carolinas, LLC (via email w enclosure)
Rebecca J. Dulin, Duke Energy Carolinas, LLC (via email w enclosure)
Frank R. Ellerbe, III, Duke Energy Carolinas, LLC (via email w enclosure)
Samuel J. Wellborn, Duke Energy Carolinas, LLC (via email w enclosure)

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET 2020-218-E

IN RE:

ALEX KADOSHNIKOV)	
Complainant/Petitioner,)	
)	DUKE ENERGY CAROLINAS, LLC’S
v.)	ANSWER AND MOTION TO
)	DISMISS COMPLAINT
DUKE ENERGY CAROLINAS, LLC,)	
Defendant/Respondent.)	
_____)	

Pursuant to S.C. Code Ann. § 58-27-1990, S.C. Code Ann. Regs. 103-829 and 103-352, and applicable South Carolina law, respondent, Duke Energy Carolinas, LLC (“DEC” or the “Company”) hereby answers the complaint filed in the above-referenced proceeding and moves the Public Service Commission of South Carolina (“Commission”) to dismiss the above-captioned matter on the merits because the Complaint fails to adequately allege any violation of a Commission-jurisdictional statute or regulation, and a hearing in this case is not necessary for the protection of substantial rights. Further, as explained below, the complaint in this case is barred by the doctrine of res judicata.

The Company also requests that the filing deadlines for all parties and the hearing date be held in abeyance until this motion is resolved. In support of its motion, DEC shows the following:

BACKGROUND

Alex Kadoshnikov filed a complaint in the above-referenced proceeding, which was docketed on September 3, 2020. The complaint states that Mr. Kadoshnikov is currently enrolled in the smart meter opt out program, but that he requires a bi-directional, non-communicating

manual read meter be installed at his residence so that he can buy and sell electricity from Duke Energy.

Mr. Kadoshnikov filed a prior complaint with the Commission in Docket No. 2018-124-E on April 5, 2018, alleging unspecified health risks associated with smart meters and opposing the Commission-approved fees associated with the Company's Manually Read Meter ("MRM") program. Mr. Kadoshnikov also filed an Amended Complaint in Docket No. 2018-124-E, which contained allegations similar to the April 5, 2018 Complaint and also described concerns with meter data security. DEC filed, and served upon the parties of record, a motion to dismiss the prior complaint. On September 19, 2018, the Commission issued Directive Order No. 2018-625 dismissing Mr. Kadoshnikov's Complaint in Docket No 2018-124-E. Mr. Kadoshnikov filed a Petition for Reconsideration of Order 2018-625 and on October 10, 2018, the Commission issued a Directive denying the Petition for Reconsideration.

As described in its October 10, 2016 filing in Docket No. 2016-354-E, the Company has deployed Advanced Metering Infrastructure ("AMI"), including smart meters, to its customers in South Carolina. The transmission of electricity usage data via smart meters enables a host of features that benefit customers. Such benefits include giving customers more information about how they use energy,¹ and laying the groundwork for programs that allow customers to stay better informed during outages, control their due dates, avoid deposits, be reconnected faster, and better understand and take control of their energy usage, and ultimately, their bills.² Acknowledging the benefits of smart meters, the Commission has required that its regulated investor-owned electric utilities make smart meters available to all customers, as well as implement a communications plan

¹ Order No. 2016-791 at 1, Docket No. 2016-354-E (Nov. 17, 2016).

² Order No. 2016-489 at 2, Docket No. 2016-240-E (July 12, 2016).

to inform all customers of the availability and capabilities of smart meters, and how customers may use those capabilities to better manage their power requirements.³

All meters used by the Company are tested to confirm that they are in compliance with Federal Communications Commission (“FCC”) rules and guidelines, which set exposure limits for all types of devices that emit radio frequencies. The FCC standards for intentional and unintentional radio emissions and safety related to radio frequency exposure, Parts 1 and 2 of the FCC’s Rules and Regulations (47 C.F.R. §§ 1.1307(b), 1.1310, 2.1091, 2.1093), govern the certification and design of communicating meters and other devices such as cordless phones, remote control toys, personal computers, televisions, vacuum cleaners, among others. All meters used by the Company comply with these standards.

The Company acknowledges that a small number of customers had reservations about the installation of smart meters. Customers who objected to the installation of a smart meter were temporarily bypassed during the deployment and continued to be served by automatic meter reading (“AMR”) meters during that time. AMR meters collect and transmit customers’ kWh usage via a low-power radio frequency signal (900 MHz radio frequency) that is read by equipment installed in the Company’s trucks as the meter readers drive by the location. As more smart meters are deployed, routes for reading AMR meters are being discontinued. For that reason, and to accommodate the limited number of customers’ concerns related to smart meter deployment, DEC proposed—and the Commission approved—the MRM Rider. Under the MRM Rider, rather than electricity usage being communicated to the Company via radio frequency, the meter is instead read manually by a meter reader physically visiting the premises.

³ Order No. 2007-618 at 4, Docket Nos. 2005-385-E and 2005-386-E (Aug. 30, 2007).

As specified in the MRM rider approved by Commission Order Nos. 2016-791 and 2019-429, and as previously communicated to Mr. Kadoshnikov on multiple occasions, the MRM Rider “is not available to customers taking service under a net metering rider.” In a similar complaint proceeding in Docket No. 2019-187-E, the Company explained that “DEC uses 30-minute interval data to bill its net metering customers, and analog meters are incapable of capturing this level of detailed data. This is why the MRM Rider expressly precludes participation by customers taking service under a net metering rider.” As found by the Commission in that case, “the MRM Rider, by its own terms, is not available to customers taking service under a net metering rider, so opting for a manually-read meter would preclude him from using the solar panels he has purchased. As [Complainant] has alleged no violation of any applicable statute or regulation in his Complaint, move that we grant Duke Energy Carolinas’ motion to dismiss.” Order No. 2019-506, Docket No. 2019-187-E (July 11, 2019).

In support of its motion to dismiss the Complaint, DEC shows the following:

ARGUMENT

DEC denies all allegations contained in the Complaint not otherwise expressly admitted herein, and requests that this matter be dismissed because the Complaint filed contains no allegation that DEC has violated any applicable statute or regulation for which the Commission can grant relief and, pursuant to S.C. Code Ann. § 58-27-1990, a hearing in this case is not necessary in the public interest or for the protection of substantial rights.

Instead of alleging a violation of any statute or regulation for which the Commission may grant relief, Complainant’s filing makes a request for a non-communicating manually read meter that is incompatible with net metering. Complainant’s filing alleges he is currently in the smart meter opt out program, but he states that in order to buy or sell electricity from Duke Energy he

will need to have a bi-directional meter installed. Complainant's filing also asserts he has unspecified health and safety concerns and requests he be allowed to have a non-communicating manual read meter installed at his residence and suggests that the connection be via telephone to send usage information or that a meter be installed on his pole and tied in there instead of his residence.

As previously explained, DEC uses 30-minute interval data to bill its net metering customers, and the meters utilized under the MRM rider are incapable of capturing and communicating this level of detailed data. This is why the MRM Rider expressly precludes participation by customers taking service under a net metering rider. As found by the Commission in a case similar to the instant proceeding, "the MRM Rider, by its own terms, is not available to customers taking service under a net metering rider, so opting for a manually-read meter would preclude him from using the solar panels he has purchased. As [Complainant] has alleged no violation of any applicable statute or regulation in his Complaint, move that we grant Duke Energy Carolinas' motion to dismiss." Order No. 2019-506, Docket No. 2019-187-E (July 11, 2019).

Regardless of the merits, Mr. Kadoshnikov's complaint in this case is also barred by the doctrine of res judicata. As recently explained by the Commission and supported by South Carolina law, "the legal doctrine of res judicata bars subsequent litigation between identical parties where the claims arise out of the same transaction or occurrence that was the subject of the prior litigation between those same parties. The doctrine bars litigants from raising any issues which were adjudicated in the prior action *as well as any issues which might have been raised in the prior action.*" Order No. 2020-519 at 2-3, Docket No. 2019-331-E (Aug. 7, 2020) (emphasis added); *see also RIM Associates v. Blackwell*, 359 S.C. 170, 183 (Ct. App. 2004). The doctrine of res judicata exists "to reduce litigation and conserve the resources of the court" *State v. Bacote*,

331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998). In the Company's view, the matters raised in the instant Complaint could have—and, as a matter of efficiency, should have—been raised in the previous complaint proceeding initiated by Mr. Kadoshnikov. This Commission previously heard and ruled on Mr. Kadoshnikov's concerns regarding AMI meters in Docket No. 2018-124-E—a docket in which Complainant made 12 separate filings—and the matters raised in the complaint in the instant proceeding could have been resolved in that docket.

To enroll in the Company's Renewable Net Metering ("RNM") rider, Complainant must have an AMI meter installed. However, Rider MRM is "not available to customers taking service under a net metering rider" because legacy meters do not support net metering.⁴ There are essentially two options available to the Complainant: (1) enroll in the RNM rider and have an AMI meter installed, or (2) remain enrolled in the MRM rider, under which net metering is not available. Because the Complaint contains no allegation that DEC has violated any applicable statute or regulation for which the Commission can grant relief and, pursuant to S.C. Code Ann. § 58-27-1990, a hearing in this case is not necessary in the public interest or for the protection of substantial rights, the Company requests that the Complaint be dismissed.

CONCLUSION

Complainant fails to adequately allege that DEC has violated any Commission jurisdictional statute or regulation, and the Complaint is barred by res judicata. Therefore, this matter should be dismissed.

WHEREFORE, DEC moves the Commission to dismiss the Complaint with prejudice, requests that the Commission hold the testimony deadlines for all parties and the hearing in

⁴ See Rider MRM, available at <https://www.duke-energy.com//media/pdfs/for-your-home/rates/electric-sc/scridermrm.pdf>.

abeyance pending resolution of this motion; and requests such other relief as the Commission deems just and proper.

Respectfully submitted this 2nd day of October, 2020.

s/ Katie M. Brown

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SOUTH CAROLINA**

DOCKET 2020-218-E

IN RE:

ALEX KADOSHNIKOV
Complainant/Petitioner,

v.

DUKE ENERGY CAROLINAS, LLC,
Defendant/Respondent.

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CERTIFICATE OF SERVICE

The undersigned, Lyndsay McNeely, Paralegal for Duke Energy Carolinas, LLC, does hereby certify that she has served the persons listed below with a copy of Duke Energy Carolinas, LLC's Answer and Motion to Dismiss Complaint in the above-captioned proceedings via electronic mail and U.S. Mail at the addresses as specified below on October 2, 2020.

Alex Kadoshnikov
Complainant

Inman, SC 29349
allex1x@yahoo.com

Carri Grube – Lybarker
SC Department of Consumer Affairs
clybarker@scconsumer.gov

Heather Shirley Smith
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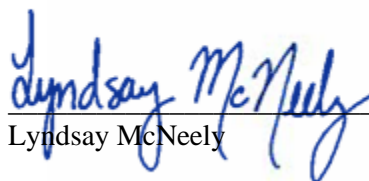
Dated this 2nd day of October, 2020.

Alexander W. Knowles
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